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863848
SERIAL NUMBER

FILING DATE

FIRST NAMED INVENTOR

ATTORNEY DOCKET NO.

07/863,848 04/06/92 ERSEK

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EXAMINER

ISABELLA, D

ART UNIT

PAPER NUMBER

3308

DATE MAILED: 02/01/93

This is a continuation or divisional application of your application
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 11/16/92 This action is made final.

A shortened statutory period for response to this action is set to expire Three month(s). 15 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1. Claims 1-30 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-30 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable. not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed on _____, has been approved. disapproved (see explanation).

12. Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received
 been filed in parent application, serial no. _____; filed on _____

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-6, 8-21, 23, 24 and 26-30 are rejected under 35 U.S.C. § 103 as being unpatentable over Politano (PUBS; "Periurethral teflon injection for urinary incontinence") in view of Ersek, et al (PUB).

The process for treating urological and gastric disorders is generally disclosed by Politano. It is not clear if there are cavities or pores formed within the particles. Ersek, et al recognize the problems with migration and studied the effects of texturized particles for augmenting soft tissues wherein tissue growth about in the particles increase particles retention in the area of augmentation. To use texturized particles in the treatment of urinary incontinence to prevent particles migration from the implant site would have been obvious to one with ordinary skill in the art from the teachings of Ersek, et al.

Claims 4 and 5, see pages 182 and 420 of Politano.

Claim 6, see Ersek, et al

Claims 8-15, are standard steps used in the treatment for urological and gastric disorders. It appears that the main inventive concept of the invention is directed to the use of the particular particles which reduces the migratory tendency of the same.

Claims 7,22 and 25 are rejected under 35 U.S.C. § 103 as being unpatentable over Politano in view of Ersek, et al as applied to claims 1,2,16 and 23 above, and further in view of Henderson, et al.

Polyvinyl pyrrolidone is well known for its use in the surgical art as a lubricating agent and physiological carrier as taught by Henderson, et al. To replace the physiological carrier of Politano with PVP if one desires more lubricity and biocompatibility, would have been obvious to one with ordinary skill in the art from Henderson.

Applicant's arguments with respect to claim s 1-30 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

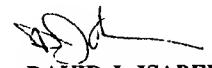
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Serial No. 863848

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Art Unit 3308

Any inquiry concerning this communication should be directed to David J. Isabella at telephone number (703) 308-0858.



DAVID J. ISABELLA
PRIMARY EXAMINER
ART UNIT 3308

DJI
January 31, 1993